IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7025 OF 2006

Shri Baban Dattu Sutar & Ors. ..Petitioners

Vs.

Shri Ismail Kasim Mulani & Anr. ..Respondents

Mr.Dilip Bodake for the petitioners

Mr.R.S.Apte with Mr.Ashutosh Gole for the respondents

CORAM : A.P.DESHPANDE, J

DATED : 16TH NOVEMBER, 2006

P.C.:

1. The original defendants have filed this writ petition calling in question legality and propriety of the order passed by the IV Ad-hoc Additional District Judge, Satara dt.16.8.2006 inturn setting aside the order passed by the trial court rejecting the application moved by the plaintiff claiming temporary injunction restraining the defendants from interfering with their possession of the suit land, and instead granting injunction.

2. The plaintiff claims that their father was in continuous possession of the suit land since 1956 and being in possession as a tenant on the tillers day become protected tenant and deem purchaser. It is not in dispute that the respondents are the owners of the property. However, the plaintiff emphathetically claims their settled possession since the year 1956 onwards till the date of filing of the suit. The question as to whether plaintiffs are the protected tenants under the tenancy law can only be gone into at the time of the trial of the suit. For the purpose of grant of temporary injunction what is material is the factum of possession and the nature of possession. The first appellate court has categorically recorded the finding in favour of the plaintiff that the revenue record from the year 1958-59 till the year 1977-78 without any exception records the name of the father of the plaintiff in crops inspection column. Thereafter the name of the plaintiff has been recorded in the crop inspection column of 7/12 extract of the suit land for the year 1980-81 till the date of filing of the suit.

3. If such is the nature of possession of land by the plaintiffs then it is obvious that the possession is settled possession and need to be protected till the rights of the rival parties are adjudicated on decision of the suit. The impugned order passed by the first appellate court also takes into consideration the other aspects of the matter and holds that the plaintiffs are in possession and hence, proceeds to grant temporary injunction.

4. I have perused the order. There is no illegality or infirmity in the said order requiring interference in Jurisdiction under Article 227 of the Constitution of India. In the result, there is no merits in the petition and the same is dismissed. Further having regard to the dispute, I direct the trial court to decide the suit as expeditiously as possible. I expect decision in the matter within period of 6 months from today.

5. At this stage, the learned counsel for the petitioner prays for grant of stay to the impugned

order passed by the first appellate court. Prayer is rejected.

6. The learned counsel for the petitioner apprehends that the observation made in this order may influence the trial court while deciding the suit on merit. Suffice it to say that all orders arising out of and passed in temporary injunction proceedings are on primafacie appreciation of material on record and do not bind the court. Hence, the apprehension is unfounded.

(SHRI A.P.DESHPANDE, J)